Supreme Court, U. S.
FILED
MAY 4 1978
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-120

DOUGHERTY COUNTY, GEORGIA BOARD OF EDUCATION; R. H. WARREN, Chairman, Dougherty County Board of Education; FRANKLIN U. CROSS, J. P. CHEEVERS, HARVEY COHEN, MORGAN MURPHY, CHUCK NESBITT, FELIX MARBRY, JR., Members, Dougherty County Board of Education; PAUL ROBERTSON, Superintendent, Dougherty County School System, individually and in their official capacities, *Appellants*.

VS.

JOHN E. WHITE, *Appellee*.

On Appeal from a Three-Judge Court in the United States District Court for the Middle District of Georgia, Albany Division

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DOCKETED JULY 21, 1977

PROBABLE JURISDICTION NOTED MARCH 20, 1978

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Relevant Docket Entries

Date	
6/11/76	Filed complaint, issued summons and delivered to US Marshal for service.
6/24/76	Filed Answer of Defendants, with Certificate of Service thereon.
7/20/76	Filed Plaintiff's First Interrogatories to Defendants, with Certificate of Service thereon.
8/23/76	Filed Defendants' Answers to Plaintiff's First Interrogatories, with Certificate of Service thereon.
12/14/76	Filed Stipulations by the parties.
12/14/76	Filed Defendants' Motion for Partial Summary Judgment, with brief in support thereof.
12/16/76	Filed Plaintiff's Motion for Partial Summary Judgment and brief in support thereof.
12/16/76	Filed Affidavit of Plaintiff John E. White.
12/16/76	Filed Affidavit of John R. Myer, Esq.
4/28/77	Filed Opinion of Judge Lewis R. Morgan, Circuit Judge, US Court of Appeals, Judge W. A. Bottle, Senior U.S. District Judge and Judge Wilbur D. Owens, Jr., US Ditsrict Judge remanding the case to the originating judge for such other and further proceedings consistent with this opinion as may be rendered, including determination of any appropriate remedy.
5/27/77	Filed Notice of Appeal to the Supreme Court of United States with Certificate of Service thereon.

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF GEORGIA

ALBANY DIVISION

CIVIL ACTION

No. 76-29-ALB

(Three Judge)

FILED JUNE 11, 1976

JOHN E. WHITE, *Plaintiff*,

vs.

DOUGHERTY COUNTY, GEORGIA BOARD OF EDUCATION; R. H. WARREN, Chairman, Dougherty County Board of Education; FRANKLIN U. CROSS, J. P. CHEEVERS, HARVEY COHEN, MORGAN MURPHY, CHUCK NESBITT, FELIX MARBRY, JR., Members, Dougherty County Board of Education; PAUL ROBERTSON, Superintendent, Dougherty County School System, individually and in their official capacities, *Defendants*.

Complaint

I.

This action for declaratory, injunctive and monetary relief is instituted to redress rights guaranteed by the Voting Rights Act of 1965, 42 U.S.C. Sec. 1971, *et seq.*, 42 U.S.C. Sec. 1983, and the Fourteenth and Fifteenth Amendments, United States Constitution. The jurisdiction of this Court is invoked pursuant to 42 U.S.C. Sec. 1971(d), 28 U.S.C.

Sec. 1343(3)(4), and 28 U.S.C. Sec. 1331. Plaintiff also seeks declaratory relief pursuant to 28 U.S.C. Secs. 2201 and 2202. The amount in controversy exceeds $10,000.

II.

Plaintiff requests the convening of a three-judge district court pursuant to 42 U.S.C. Sec. 1971(g).

III.

Plaintiff, JOHN E. WHITE, is an adult Black citizen of the United States residing in Albany, Georgia.

IV.

Defendant, DOUGHERTY COUNTY BOARD OF EDUCATION, exists pursuant to the Constitution and laws of the State of Georgia, and is charged with the responsibility and function of establishing, maintaining, and operating the public school system of Dougherty County, Georgia; R. H. WARREN is Chairman, Dougherty County Board of Education. He is sued in his individual and official capacity; FRANKLIN U. CROSS, J. P. CHEEVERS, HARVEY COHEN, MORGAN MURPHY, CHUCK NESBITT, FELIX MARBRY, JR., are members of the Dougherty County Board of Education. They are sued in their individual and official capacities. PAUL ROBERTSON is Superintendent of the Dougherty County School System. He is sued in his individual and official capacity.

V.

Plaintiff has been employed by the defendants in the Dougherty County School System since 1966 as an Assistant Coordinator of Student Personnel Services. Plaintiff is employed on a twelve month basis. In 1972, plaintiff announced his candidacy for election to the Georgia House of Representatives. In May, 1972, the defendants adopted "Rule 58" which provides as follows:

"Political Office. Any employee of the school system who becomes a candidate for any elective political office, will be required to take a leave of absence, without pay, such leave becoming effective upon the qualifying for such elective office and continuing for the duration of such political activity, and during the period of service in such office, if elected thereto."

VI.

On information and belief, plaintiff was the first Black candidate from Albany for the Georgia House of Representatives.

VII.

Plaintiff qualified for the office in June, 1972. Pursuant to the then recently adopted Rule 58, plaintiff was required to take a leave of absence from his employment without pay immediately upon his qualification for the election. Plaintiff was unsuccessful in the Democratic primary election held in August, 1972. Plaintiff returned to employment with defendants in September, 1972.

VIII.

In June, 1974, plaintiff again qualified to run for election to the Georgia House of Representatives. Again, defendants, pursuant to Rule 58, required plaintiff, effective June 12, 1974, to take a leave of absence from employment without pay during the pendency of his candidacy. Plaintiff was successful in the Democratic primary election held in August, 1974. During the period following the primary election until the General Election held on November 5, 1974, plaintiff continued to be denied employment. Plaintiff was elected to the Georgia House of Representatives at the General Election held November 5, 1974. Plaintiff was reinstated in his employment with defendants effective November 18, 1974.

IX.

On June 8, 1976, plaintiff again qualified to run for election to the Georgia House of Representatives. Defendants, pursuant to Rule 58, then required plaintiff to again take a leave of absence without pay, effective June 8, 1976, and plaintiff is currently in that status and will remain so, through the Primary Election to be held in August, 1976, and if successful at that election, through the General Election to be held in November, 1976.

First Cause of Action

X.

The actions of the defendants complained of herein are in violation of the Voting Rights Act of 1965, 42 U.S.C. Sec. 1971, *et seq.*, in that defendants have instituted a "voting qualification or prerequisite to vote, or standard, practice or procedure with respect to voting different from that in force or effect on November 1, 1964" without submitting or obtaining the required approval of either the United States Attorney General or the United States District Court for the District of Columbia, as required by Section Five of the Voting Rights Act of 1965. Defendants are a "covered jurisdiction" within the meaning of the Voting Rights Act.

XI.

Because defendants have failed to comply with the Voting Rights Act of 1965, Rule 58 is unenforceable and the defendants' application of Rule 58 to plaintiff has been unlawful.

Second Cause of Action

XII.

The actions of defendants complained of herein have deprived, under color of state law, plaintiff of rights se-

cured by the Voting Rights Act of 1965, the Fourteenth and Fifteenth Amendments, United States Constitution, 42 U.S.C. Sec. 1983.

Third Cause of Action

XIII.

The actions of defendants complained of herein have vio-violated plaintiff's rights, as guaranteed by the Due Process Clause, Fourteenth Amendment, United States Constitution, in that, Rule 58 denies arbitrarily, capriciously and irrationally, plaintiff his rights to liberty and property to pursue his employment.

Fourth Cause of Action

XIV.

The actions ofdefendants complained of herein have violated plaintiff's rights as guaranteed by the Equal Protection Clause, Fourteenth Amendment, in that, the Rule 58 discriminates on the basis of race.

Fifth Cause of Action

XV.

The actions of defendants complained of herein have violated plaintiff's rights as guaranteed by the Fifteenth Amendment, United States Constitution, in that, Rule 58 discriminates and abridges, on the basis of race, plaintiff's rights.

WHEREFORE, plaintiff respectfully prays that this Court:

1. Convene a three-judge district court, pursuant to 42 U.S.C. 1971(g);

2. Declare that Rule 58 is in violation of the Voting Rights Act to 1965, the Fourteenth and Fifteenth Amendments, United States Constitution, and 42 U.S.C. 1983;

3. Preliminary and permanently enjoin defendants from enforcing or implementing Rule 58;

4. Grant plaintiff an award of money equal to the amount of back pay lost because of defendants' application of Rule 58 applied to plaintiff as complained of herein;

5. Grant plaintiff an award of reasonable attorney's fees;

6. Grant such other and further relief as the Court deems meet and proper.

/s/ JOHN R. MYER

John R. Myer
CROSLAND, MYER & RINDSKOPF
2415 National Bank of Georgia Bldg.
Atlanta, Georgia 30303

ATTORNEY FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF GEORGIA

ALBANY DIVISION

CIVIL ACTION

No. 76-29-ALB

FILED JUNE 24, 1976

[TITLE OMITTED IN PRINTING]

Answer of Defendants

Now come the Defendants and file these their responses to the Complaint heretofore filed, and for response show the Court as follows:

First Defense

The Complaint fails to set forth a cause of action against these Defendants upon which relief can be granted.

Second Defense

1. Answering paragraph 1 of the Complaint, these defendants admit that the action alleges that it is for declaratory, injunctive and monetary relief and further to redress rights guaranteed by the Voting Rights Act of 1965, 42 USC § 1971, et seq., 42 USC § 1983, and the Fourteenth and Fifteenth Amendments, United States Constitution. Further, these defendants admit that plaintiff alleges that jurisdiction of this Court is involved pursuant to the statutes set forth in paragraph one and that the plaintiff also alleges that he seeks declaratory relief pursuant to 28 USC §§ 2201 and 2202.

Further answering paragraph 1 of the Complaint, these defendants show that they have in no way deprived the plaintiff of any rights guaranteed as alleged in paragraph 1 of the Complaint and deny that the amount in controversy exceeds $10,000.00.

2. Answering paragraph 2 of the Complaint, these defendants show that the Complaint filed in this matter does not require the convening of a three-judge district court pursuant to 42 USC § 1971(g).

3. These defendants admit the allegations of paragraph 3 of the Complaint.

4. These defendants admit the allegations of paragraph 4 of the Complaint.

5. These defendants admit the allegations of paragraph 5 of the Complaint.

6. These defendants are without sufficient knowledge with which to form a belief as to the truth of the allegations of paragraph 6 of the Complaint.

7. These defendants admit the allegations of paragraph 7 of the Complaint.

8. These defendants admit the allegations of paragraph 8 of the Complaint.

9. These defendants admit the allegations of paragraph 9 of the Complaint.

10. These defendants deny the allegations of paragraph 10 of the Complaint and further show that these defendants have not instituted a "voting qualification or prerequisite to vote, or standard, practice or procedure with respect to voting different from that in force or effect on November 1, 1964".

11. These defendants deny the allegations of paragraph 11 of the Complaint.

12. These defendants deny the allegations of paragraph 12 of the Complaint.

13. These defendants deny the allegations of paragraph 13 of the Complaint.

14. These defendants deny the allegations of paragraph 14 of the Complaint.

15. These defendants deny the allegations of paragraph 15 of the Complaint.

16. These defendants deny each and every allegation of the Complaint not herein admitted, controverted or specifically denied.

WHEREFORE, these defendants having fully answered, pray that they be discharged.

PERRY, WALTERS, LIPPITT & CUSTER

/s/ JESSE W. WALTERS

Jesse W. Walters

Attorneys for Defendants

[CERTIFICATE OF SERVICE OMITTED IN PRINTING]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF GEORGIA

ALBANY DIVISION

CIVIL ACTION No. 76-29-ALB

(Three Judge)

FILED JUNE 20, 1976

[TITLE OMITTED IN PRINTING]

Plaintiff's First Interrogatories to Defendants

To: Jesse W. Walters, Esq.
P. O. Box 527
Albany, Georgia 31702,

Attorney for Defendants.

PLEASE TAKE NOTICE that plaintiff hereby requests, pursuant to Rule 33 of the Federal Rules of Civil Procedure, that defendants answer under oath within thirty (30) days of service hereof, the following written interrogatories. After the answer to each interrogatory, you are required to identify separately and in a manner suitable for use as a description in a subpoena all sources of information (documentary, human or other) and all records maintained by defendant or any other person or organization upon which you rely in answering the interrogatory or which pertain or relate to the information requested. These interrogatories shall be deemed continuing to the time of trial. Responses to one interrogatory or part thereof may be incorporated by reference in response to other interrogatories or parts of interrogatories where clarity of answer

will not be compromised. In lieu of identifying particular documents, said document may be attached at the option of defendant to the responses to these interrogatories.

Each of the following interrogatories shall be deemed continuing and you are requested to provide, by way of supplementary answers thereto, such additional information as may hereinafter be obtained by you or any person acting on your behalf (including your counsel of record) which information will augment or otherwise modify any answer now given to the attached interrogatories. Any such supplementary responses are to be filed and served upon counsel of record for the plaintiff within thirty (30) days after receipt of such information but not later than the time of trial or hearing.

1. Please state the names and addresses of persons serving as members of the Dougherty Board of Education from 1970 to the present, and for each such person, indicate the terms of service.

2. State the names and business addresses of all persons who promulgated and adopted Rule 58 of the Dougherty County Board of Education.

3. State the names and business addresses of all persons not identified in your answer to the preceding interrogatory who participated in the formulation, development, promulgation and adoption of Rule 58 and who would have information concerning its adoption.

4. State in detail the reasons why Rule 58 was adopted by the Dougherty County Board of Education and identify the source or sources upon which you rely for your answer to this interrogatory.

5. State whether in the past or present, any employee of the Dougherty County Board of Education (other than plaintiff) has ever run for public office while an employee of the Dougherty County Board of Education.

6. If your answer to the preceding interrogatory is affirmative, for each such person identified, please state:

(a) His/her name, race, address and past or present position with the Dougherty County Board of Education;

(b) The public office sought and the dates of such candidacy or service as an elected official;

(c) Whether such employee was required to take a leave of absence from employment without pay or otherwise was subjected to any adverse employment action.

7. Please identify with sufficient specificity for a description in a subpoena duces tecum all written documents, including studies, reports, correspondence, memoranda, or other regarding Rule 58 and for each such documents, state the name, business address of the custodian of the written document.

8. State whether the Dougherty County Board of Education had ever adopted or implemented any rule or rules concerning candidacy for or service in public office prior to the adoption of Rule 58.

9. If your answer to the preceding interrogatory is affirmative, please identify in detail any such rule or rules, including whether in written form and when adopted or implemented.

10. Do you contend that the Dougherty County Board of Education is not a "covered jurisdiction" within the meaning of the Voting Rights Act of 1965.

11. Please state the names, business titles, race and dates of leave of all other employees of the Dougherty County Board of Education who have been required to take leaves pursuant Rule 58.

12, Please state in detail the reasons why Rule 58 was not submitted to the United States Attorney General or the United States District Court for the District of Columbia pursuant to Section Five of the Voting Rights Act of 1965 prior to its implementation.

/s/ JOHN R. MYER

John R. Myer
2415 National Bank of Georgia Bldg.
Atlanta, Georgia 30303
(404) 522-1934

Attorney For Plaintiff

[CERTIFICATE OF SERVICE OMITTED IN PRINTING]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF GEORGIA

ALBANY DIVISION

CIVIL ACTION

No. 76-29-ALB

(Three Judge)

FILED AUGUST 23, 1976

[TITLE OMITTED IN PRINTING]

Defendants' Answers to Plaintiff's First Interrogatories

In response to Interrogatories served upon the Defendants, by the Plaintiff in the above case, the Defendants answer as follows:

1. R. H. Warren, III, Warren & Brimberry, Inc., P. O. Box 1110, Albany, Georgia 31702—has served from 1969 to present; Felix Marbury, Marbury Pecans, 1440 Gillionville Road, Albany, Georgia 31707—served from 1964 until June 1976; Morgan Murphy, First State Bank & Trust Company, P. O. Box 8, Albany, Georgia 31702—has served from 1970 to present; Dr. J. P. Cheevers, 309 Whitney Avenue, Albany, Georgia 31701—has served from 1968 to present; Harvey J. Cohen, P. O. Box 507, Albany, Georgia 31702—has served from 1970 to present; Franklin U. Cross, P. O. Box 4332, Albany, Georgia 31702—has served from 1969 to present; Charles L. Nesbitt, 1441 South Mock Road, Albany, Georgia 31705—has served from 1970 to present;

Fred Sumter, First Federal Savings and Loan Association, P. O. Box 648, Albany, Georgia 31702—appointed July, 1976.

2. All persons listed in Number 1 above except Fred Sumter.

3. J. J. Cordell, Superintendent (retired), 1615 Third Avenue, Albany, Georgia 31707; Howard D. Waters, Director, Albany Area Technical School (retired), 917 Sixth Avenue, Albany, Georgia 31701; Jesse W. Walters, Attorney, 409 North Jackson Street, Albany, Georgia 31701; Paul B. Robertson, Asst. Superintendent, 601 Flint Avenue, P. O. Box 1470, Albany, Georgia 31702.

4. Rule 58 was adopted by the Dougherty County Board of Education because the Board of Education deemed it necessary to have a rule which would set forth the policy of the Board pertaining to personnel within the school system offering for elective office and serving in an elective office if elected thereto.

5. None, so far as can be ascertained.

6. Not applicable.

7. Minutes of Board of Education meeting of June 12, 1972; minutes of Board of Education meeting of September 9, 1974; and minutes of Board of Education meeting of October 14, 1974.

8. No.

9. Not applicable.

10. Yes.

11. None, however, no employee of Dougherty County Board of Education other than plaintiff has offered for public office.

12. See answer to Number 10.

GEORGIA,

DOUGHERTY COUNTY:

Personally appeared before the undersigned officer duly authorized by law to administer oaths, PAUL B. ROBERTSON, who, after being duly sworn, deposes and on oath says that he is Superintendent of the Dougherty County School System, and the answers contained in the foregoing DEFENDANT'S ANSWERS TO PLAINTIFF'S INTERROGATORIES are true and correct to the best of his knowledge and belief.

/s/ PAUL B. ROBERTSON

Paul B. Robertson

[CERTIFICATE OF SERVICE OMITTED IN PRINTING]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF GEORGIA

ALBANY DIVISION

CIVIL ACTION No. 76-29-ALB.

(Three judge)

FILED DECEMBER 14, 1976

[TITLE OMITTED IN PRINTING]

Stipulations

Come now the parties, through their undersigned attorneys, and hereby stipulate for the purposes of this action the following stipulations of fact.

1. The Dougherty County Board of Education is the body empowered by the Constitution of the State of Georgia with the responsibility for administering the Dougherty County, Georgia public school system.

2. Plaintiff John E. White is a Black citizen of the United States residing in Albany, Georgia.

3. Plaintiff has been employed by the Dougherty County Board of Education as an Assistant Coordinator of Student Personnel Services since November, 1966.

4. On June 12, 1972, the Dougherty County Board of Education adopted Rule 58.

5. Pursuant to Rule 58, plaintiff has had to take leaves of absence without pay from his position with the Dougherty County Board of Education during the periods of his

candidacy for the office of representative in the Georgia House of Representatives:

1972: June, 1972—September, 1972.

1974: June 12, 1974—November 18, 1974.

1976: June 8, 1976—September 8, 1976.

6. No submission of Rule 58 has been made by the Dougherty County Board of Education or its authorized agents for approxal pursuant to the Voting Rights Act of 1965.

The foregoing matters were stipulated and agreed upon between John R. Myer, Attorney for Plaintiff, and Jesse W. Walters, Attorney for Defendants, in telephone conversation, this 13th day of December, 1976.

/s/ JESSE W. WALTERS

Jesse W. Walters

Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF GEORGIA

ALBANY DIVISION

CIVIL ACTION No. 76-29-ALB.

FILED DECEMBER 14, 1976

[TITLE OMITTED IN PRINTING]

Motion for Partial Summary Judgment

The defendants move the Court to enter a partial Summary Judgment in their favor against Plaintiff on the ground that there is no genuine issue as to any material fact pertaining to the alleged violation of the Voting Rights Act of 1965 on the part of the defendants. This being true the defendants are entitled to judgment as a matter of law.

This motion is based upon the pleadings and any stipulations of record.

This 13th day of December, 1976.

PERRY, WALTERS, LIPPITT & CUSTER

/s/ JESSE W. WALTERS

Attorneys for Defendants

[CERTIFICATE OF SERVICE OMITTED IN PRINTING]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF GEORGIA

ALBANY DIVISION

CIVIL ACTION No. 76-29-ALB.

(Three judge)

FILED DECEMBER 16, 1976

[TITLE OMITTED IN PRINTING]

Plaintiff's Motion for Partial Summary Judgment

Comes now the Plaintiff, through his undersigned attorney, and moves this Court, pursuant to Rule 56, F.R.C.P. for an order granting partial summary judgment in his favor on Count One of the Complaint. Specifically, Plaintiff moves this Court to enter an order declaring that defendants are required to obtain approval, pursuant to Section 5 of the Voting Rights Act of 1965, of Rule 58 of the Dougherty County Board of Education, and enjoining the enforcement of Rule 58 until such approval and ordering an award of lost wages and attorneys fees.

This Motion for Partial Summary Judgment is based upon the pleadings and interrogatories on file in this case, the Affidavits attached hereto, and the Stipulation of the parties entered into for the purposes of this Motion.

This 13th day of December, 1976.

Respectfully submitted,

/s/ JOHN R. MYER

John R. Myer
CROSLAND, MYER & RINDSKOPF
2415 National Bank of Georgia Building
Atlanta, Georgia 30303
404-522-1934

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

CIVIL ACTION No. 76-29-ALB.
(Three judge)

FILED DECEMBER 16, 1976
[TITLE OMITTED IN PRINTING]

Affidavit of Plaintiff John E. White

STATE OF GEORGIA)
COUNTY OF DOUGHERTY) ss

Comes now JOHN E. WHITE before the undersigned Notary Public and on oath deposes and says as follows:

1. I am the plaintiff in this action. I am an adult Black citizen of the United States residing in Albany, Georgia.

2. I have been employed by the Dougherty County Board of Education since November, 1966. During that time, I have served as an Assistant Coordinator of Student Personnel Services. Beginning in March, 1975, my working hours were changed by the Board of Education from 8:00 a.m. to 4:00 p.m. to 2:30 p.m. to 10:30 p.m.

3. In May, 1972, I informed the Director of the Albany Vocational School of my intention to run for the Georgia House of Representatives.

4. On June 10, 1972, the Dougherty County Board of Education adopted Rule 58.

5. I believe that I am the first Black citizen to run from Dougherty County for the Georgia General Assembly in many, many years; perhaps the first since the Post-Civil War Reconstruction Era.

6. I qualified to run for the office in June, 1972, and pursuant to the recently adopted Rule 58, I was required to take a leave of absence from my employment without pay. I lost the Democratic primary election in August, 1972 and returned to my employment in September, 1972.

7. In June, 1974, I again qualified to run for the Georgia House of Representatives. Again, effective June 12, 1974, I was required to take a leave of absence from my employment with the Dougherty County School Board without pay during the time of my candidacy. I was successful in the Democratic Primary election held in August, 1974. During the period of time following the primary election and until the General Election in November, 1974, I was continually denied employment because of Rule 58. I was elected to the House of Representatives in the November, 1974 General Election held on November 5, 1974. I was reinstated in my employment on November 18, 1974.

8. On June 8, 1976, I again qualified to run for re-election to the Georgia House of Representatives. Defendants, pursuant to Rule 58, again required me to take a leave of absence without pay effective June 8, 1976. I was denied employment from that date until after my re-election in the August, 1976 Democratic Primary. On September 8, 1976, I was reinstated in my position. I did not have General Election opposition in 1976.

9. I have suffered, as a result of the application of Rule 58 to my employment, loss of compensation in the following amounts:

1972—$2,810
1974—$4,780
1976—$3,750

This affidavit is given in support of my Motion for Partial Summary Judgment.

This 13 day of December, 1976.

/s/ JOHN E. WHITE

John E. White

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF GEORGIA

ALBANY DIVISION

CIVIL ACTION No. 76-29-Alb.

(three-judge)

FILED DECEMBER 16, 1976

[TITLE OMITTED IN PRINTING]

Affidavit of John R. Myer, Esq.

STATE OF GEORGIA)
COUNTY OF FULTON) ss

Comes now JOHN R. MYER, ESQ., before the undersigned NOTARY PUBLIC who on oath deposes and says as follows:

1. I am a member of the Bar of the State of Georgia engaged in the private practice of law. I maintain my offices at 2514 National Bank of Georgia Building, Atlanta, Georgia.

2. I represent the plaintiff, John E. White, in the above captioned action.

3. During the course of my representation of plaintiff, I received from the office of the United States Attorney General a copy of a letter dated August 26, 1976 to Mr. Paul Robertson, Superintendent, Dougherty County School System from J. Stanley Potting, Assistant Attorney General, Civil Rights Division. A copy of that letter is attached hereto as Exhibit A.

This affidavit is given in support of plaintiff's motion for partial summary judgment.

This 12th day of December, 1976.

/s/ JOHN R. MYER

John R. Myer

Exhibit A

Mr. Paul Robertson
Superintendent
Dougherty County School System
Post Office Box 1470
Albany, Georgia 31702

Dear Mr. Robertson:

It has been brought to my attention that in 1972 the Dougherty County Board of Education adopted a rule requiring employees of the school system who become candidates for elective office to take a leave of absence, without pay, during their candidacy and service in office.

Our records fail to show that this change in a standard, practice or procedure which affects voting has been submitted to the United States District Court for the District of Columbia for judicial review or to the Attorney General for administrative review as required by Section 5 of the Voting Rights Act of 1965, as amended. If our information is correct, it is necessary that this change either be brought before the District Court for the District of Columbia or submitted to the Attorney General for a determination that the change does not have the purpose and will not have the affect of discriminating on account of race or color. Changes in procedure which affect voting are unenforceable unless and until the Section 5 preclearance requirements have been met.

If you have any questions concerning the matters discussed in this letter, please do not hesitate to call Ms. Elizabeth Dunigan (202-739-3887) of my staff, who has been assigned to handle this matter. Please refer to File No. X7539 in any written response to this letter so that your correspondence will be properly channelled.

Sincerely,

J. Stanley Pottinger

Assistant Attorney General
Civil Rights Division

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF GEORGIA

ALBANY DIVISION

CIVIL ACTION No. 76-29-Alb.

FILED APRIL 28, 1977

[TITLE OMITTED IN PRINTING]

Before MORGAN, Circuit Judge; BOOTLE, Senior District Judge; OWENS, District Judge.

OWENS, District Judge:

Opinion

In 1965 Congress enacted the Voting Rights Act to eliminate the racial discrimination in voting that Congress believed to still exist in a minority of the states of these United States, chiefly those in the traditional South. As contemplated, only eleven states were brought within the coverage [1] of the Act—South Carolina, Alabama, Alaska,

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[1] As originally enacted, the law was to apply

> "in any State or in any political subdivision of a state which (1) the Attorney General determines maintained on November 1, 1964 any test or device, and with respect to which (2) the Director of the Census determines that less than 50 percentum of the persons of voting age residing therein were registered on November 1, 1964, or that iess than 50 percentum of such persons voted in the presidential election of November 1964." 42 U.S.C.A. Sec. 1973b(b).

The appropriate determinations subjecting Georgia and its political subdivisions to the Act were made on August 6, 1965, and published in the Federal Register on August 7, 1965. 30 Fed. Feg. 9897.

Georgia, Louisiana, Mississippi, Virginia, twenty-six counties in North Carolina, three counties in Arizona, one county in Hawaii, and one county in Idaho. *South Carolina* v. *Katzenbach*, 383 U.S. 301, 15 L. Ed. 2d 769, 86 S.Ct. 803 (1966).

Section Five of the Act, 42 U.S.C.A. § 1973c, provides that whenever a covered state of political subdivision "shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964. . ." it may not utilize or implement such change until (a) it has secured a judicial determination in the U.S. District Court for the District of Columbia that the change does not have the purpose or effect of denying the right to vote on account of race or (b) it has submitted such change to the Attorney General of the United States and the Attorney General has not interposed an objection within sixty days. While the Act does not specifically provide a remedy for failure to comply with Section Five, the Supreme Court has held that a complaint for injunctive relief to be heard by a district court of three judges may be filed in any U.S. District Court and that court if it is shown that Section Five applies must enjoin the utilization or implementation of such change until Section Five is complied with. *Allen* v. *Board of Elections*, 393 U.S. 544, 22 L. Ed. 2d 1, 89 S. Ct. 817 (1969).

While the word "vote" is broadly defined in the Act, to wit: "all action necessary to make a vote effective including, but not limited to, registration or other action required by State law prerequisite to voting, casting a ballot, and having such ballot counted and included in the appropriate totals of votes case. . ." 42 U.S.C.A. § 1971(e), the outer limits of the applicability of the Act remained in doubt and subject to argument until the Supreme Court decided *Allen, supra*, in 1969.

The *Allen* decision disposed of appeals in three separate cases from Mississippi and one from Virginia. The Mississippi cases concerned (1) a Mississippi law authorizing county officials to change from district to at-large elections, (2) a Mississippi law eliminating the option of certain counties to elect or appoint a county superintendent of education and specifying that the superintendent shall be appointed, and (3) a Mississippi law changing the requirements for independent candidates running in general elections. The Virginia case involved a bulletin issued by the Virginia Board of Elections changing procedures for illiterates to vote. Pointing to the broad definition of the word "vote" and the legislative history of the Act, the Court rejected the invitation to narrowly construe the applicability of the Act to just the voting process and proceeded to find that the Act was "intended to reach any state enactment which altered the election law of a covered state *in even a minor way. . . .*" *Allen, supra,* at 566; 22 L. Ed. 2d at 17; 89 S. Ct. at ——. (emphasis added). The Virginia bulletin and each of the Mississippi laws were held to be encompassed by the Act, and each District Court was instructed "to issue injunctions restraining the further enforcement of the enactments until such time as the States adequately demonstrate compliance with § 5." *Id.* at 572, 22 L. Ed 2d at 21, 89 S. Ct. at ——.

Relying on Section Five as broadly interpreted, the plaintiff John E. White, a black citizen of Dougherty County, Georgia, filed his complaint alleging that in May 1972 while employed by the Dougherty County Board of Education, he publicly announced his intention to become a candidate for a seat in the House of Representatives of the General Assembly of Georgia. Plaintiff White states that he thus became the first black in recent years to seek election in Dougherty County as a Representative to the General Assembly. In June 1972 the defendant Dougherty County

Board of Education for the first time adopted the following policy known as Rule 58:

> "Political Office. Any employee of the school system who becomes a candidate for any elective political office, will be required to take a leave of absence, without pay, such leave becoming effective upon the qualifying for each elective office and continuing for the duration of such political activity, and during the period of service in such office, if elected thereto.

As required by this rule the plaintiff took a leave of absence without pay from the time of his qualification as a Democratic primary candidate in June 1972 until his defeat in the Democratic primary election in August 1972. In June 1974 he again qualified to run for the same office and was required to take a leave of absence from his employment on June 12, through and including his winning the August 1974 primary election and the November 1974 general election. Following the general election of November 5 he was reinstated in his employment on November 18, 1974. The court has not been advised whether or not he had opposition in the general election. On June 8, 1976, he again qualified to run for the same office and was required to take a leave of absence without pay through and including the August 1976 Democratic primary election. He won that election, did not have opposition in the general election, and was reinstated to his employment on September 8, 1976, preceding the November general election. Plaintiff's affidavit shows that as a result of these leaves of absence without pay, he was deprived of the following amounts of monetary compensation:

1972	$ 2,810.00
1973	4,780.00
1976	3,750.00

Rule 58 has not been submitted for United States District Court for the District of Columbia judicial approval or to the Attorney General for him to have the opportunity to disapprove, all pursuant to Section Five. Plaintiff contends that Rule 58 is encompassed by Section Five and that its use must be enjoined until Section Five is complied with. Defendants assert that even the discussed expansive interpretation of Section Five does not reach what is purely a personnel policy of a local public board of education.

The facts as recited have been stipulated, cross motions for partial summary judgment have been filed, briefs have been submitted, and the issue of whether or not Rule 58 is subject to the procedures of Section Five is ready for decision by this district court of three judges.

This district court of three judges is required to resolve and dispute as to the coverage of Section Five, or said more directly, to determine "whether such changes have the *potential* for diluting the value of the Negro vote and are within the definitional terms of § 5." *Georgia* v. *United States*, 411 U.S. 526 ,534, 36 L. Ed. 2d 472, 481, 93 S. Ct. 1702, —— (1973). The question of coverage to be decided by this court does not include the ultimate question required by Section Five to be presented to the District Court for the District of Columbia or the Attorney General, *i.e.*, whether or not the enactment in truth and fact has a discriminatory purpose or effect. *Perkins* v. *Matthews*, 400 U.S. 379, 383, 27 L.Ed. 2d 476, 482, 91 S.Ct. 431 —— (1971).

Section Five as judicially interpreted sweeps broadly over all phases of the electoral system so as to include even the statutory change of the date by which a declaration of candidacy must be filed, *Hadnott* v. *Amos*, 394 U.S. 3581, 22 L. Ed. 2d 336, 89 S.Ct. 1101 (1969); changes of the location of polling places and municipal annexations enlarging the number of voters. *Perkins, supra*; and the en-

largement of the distance from the polling place within which campaigning is allowed, *Clayton* v. *North Carolina State Board of Elections*, 319 F. Supp. 915 (E.D. N.C. 1970).

As the Supreme Court said in *Georgia* v. *United States*, *supra*, in deciding whether or not Georgia's 1972 legislative reapportionment plan was subject to § 5:

> "... Section 5 is not concerned with a simple inventory of voting procedures, but rather with the reality of changed practices as they affect Negro voters.
>
> • • •
>
> "The applicability of § 5 to election law changes such as those enacted by Georgia in its 1972 plan was all but conclusively established by the opinion of this Court in Allen v State Board of Elections, 393 US 544, 22 L Ed 2d 1, 89 S Ct 817. The Allen opinion, dealing with four companion cases, held that § 5 applied to a broad range of voting law changes, and was constitutional as applied. With respect to the reach of § 5, we held that '[t]he legislative history on the whole supports the view that Congress intended to reach any state enactment which altered the election law of a covered State in even a minor way.' Id., at 566, 22 L Ed 2d 1. . . .
>
> "Had Congress disagreed with the interpretation of § 5 in Allen, it had ample opportunity to amend the statute. After extensive deliberations in 1970 on bills to extend the Voting Rights Act, during which the Allen case was repeatedly discussed, the Act was extended for five years, without any substantive modification of § 5. Pub L 91-285, 84 Stat 314, 315. We can only conclude, then, that Allen correctly interpreted the congressional design when it held that "the Act gives a broad interpretation to the right to vote, recognizing that voting includes 'all action necessary to make a vote effective.' " 393 US at 565-566, 22 L Ed 2d 1." *Id* at 531-533, 36 L. Ed 2d at 479-80, 93 S.Ct. at ——.

Section Five, then, is more than a narrow guarantee against interference with the actual casting of a ballot. It is instead an all-encompassing protection against abridgement of an *effective* vote and to that end prohibits prior to required District of Columbia federal scrutiny, the enforcement of enactments of every nature or sort which touch the electorate's ability to have a choice as well as its right to choose. In short, it applies to modifications of the political process and all that that process entails, including the implementation of any policy implemented by a covered "State or political subdivision", 42 U.S.C.A. § 1973c, which restricts the ability of citizens to run for office.

Rule 58 of the Dougherty County Board of Education is such a modification of the political process. By imposing a financial loss on its employees who choose to become candidates, it makes it more difficult for them to participate in the democratic process and, consequently, restricts the field from which the voters may select their representatives. As in *Allen, supra,* and *Hardnott, supra,* it is an "increased barrier" for a candidate and for that reason it is a "procedure with respect to voting" that is subject to the requirements of Section Five.

To paraphrase *Georgia* v. *United States, supra,* the applicability of Section 5 to rules and regulations which place restrictions upon the opportunity of black citizens to offer for elective office was all but conclusively established by *Allen, supra.*

Rule 58 being subject to the requirements of Section Five and those requirements having not been met, the enforcement of Rule 58 must be enjoined by this court.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the defendants, their agents, officers, servants, employees

and attorneys, and all persons in active concert with them who receive actual notice of this order by personal service or otherwise, are hereby enjoined from further using and enforcing in any respect Rule 58 of the Dougherty County Board of Education.

This three-judge court having finally resolved the issue properly before it, does hereby dissolve itself and remand the case to the originating judge for such other and further proceedings consistent with this opinion as may be required, including determination of an appropriate remedy.

So Ordered, this the 27th day of April, 1977.

/s/ Lewis R. Morgan
Lewis R. Morgan, Circuit Judge
United States Court of Appeals

/s/ W. A. Bootle
W. A. Bootle
Senior United States District Judge

/s/ Wilbur D. Owens, Jr.
Wilbur D. Owens, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF GEORGIA

ALBANY DIVISION

Civil Action No. 76-29-ALB.

(Three Judge)

Filed May 27, 1977

[Title Omitted in Printing]

Notice of Appeal to the Supreme Court of the United States

Notice is hereby given that Dougherty County, Georgia Board of Education: R. H. Warren, Chairman, Dougherty County Board of Education, Franklin U. Cross, J. P. Cheevers, Harvey Cohen, Morgan Murphy, Chuck Nesbitt, Felix Marbry, Jr., Members, Dougherty County Board of Education; Paul Robertson, Superintendent, Dougherty County School System, individually and in their official capacities, Defendants above named, and Appellants on appeal, hereby appeal to the Supreme Court of the United States from the final Order enjoining the defendants from further using and enforcing Rule 58 of the Dougherty County Board of Education for the reason that the Rule is subject to the requirements of Section 5 of the Voting Rights Act, 42 USC § 1973(c) and the requirements of Section 5 have not been met. The Order was entered in this action on April 27, 1977 and the Order was filed April 28, 1977.

This appeal is taken pursuant to 28 USC 1253 and 42 USC 1973(c).

This the 27th day of May, 1977.

PERRY, WALTERS, LIPPITT & CUSTER

/s/ JESSE W. WALTERS

JESSE W. WALTERS, as Attorney for Defendants—Dougherty County, Georgia Board of Education: R. H. Warren, Chairman, Dougherty County Board of Education; Franklin U. Cross, J. P. Cheevers, Harvey Cohen, Morgan Murphy, Chuck Nesbitt, Felix Marbry, Jr., Members, Dougherty County Board of Education; Paul Robertson, Superintendent, Dougherty County School System, individually and in their official capacities, Appellants.

[CERTIFICATE OF SERVICE OMITTED IN PRINTING]